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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the American Association of Jurists, a non-governmental organization in category II consultative status

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1998/4.

[19 April 1993]

The Pan-Canadian section of AAJ has followed the work of the Committee on Economic, Social and Cultural Rights with continuing interest since its creation. It has on occasion been prompted by the Committee's General Comments to remind Canada of its obligations under the International Covenant on Economic, Social and Cultural Rights. Emboldened by the Committee's example, it submitted some comments on the second periodic report of Canada, concerning articles 10-15 of the Covenant, with which it had become acquainted. 1/ Thus the Pan-Canadian section of AAJ has responded to the Committee's often repeated sentiment that in order to work well it needs to ascertain the viewpoints of non-governmental organizations and third parties. The paragraphs that follow are intended to highlight the increasingly precarious living conditions of millions of Canadian men and women. In this way, AAJ wishes to draw the Committee's attention to the fact that Canada is more and more systematically failing to guarantee its population the right to an adequate standard of living and other rights such as the right to work and to social security. This brief note is intended to provide information of benefit in the interpretation and monitoring of the principle that individual rights and respect for economic and social rights are interdependent.

CONSTITUTIONAL BACKGROUND

Canadian citizens are not guaranteed economic and social rights under the Canadian Constitution or, more particularly, the Canadian Charter of Human Rights and Freedoms. In recent years a number of attempts to redistribute federal and provincial jurisdiction under the Constitution have failed. In the negotiations, a number of bodies concerned with individual rights have attempted in vain to get a draft social charter for Canada onto the agenda. 2/ This is because the peculiarities of the modern Canadian federal system and structural changes in the Canadian economy are affecting the enjoyment of economic and social rights by Canadians.

CANADIANS' SAFETY NET AND THE FEDERAL STRUCTURE

The Federal Government in Canada is deeply involved in social security. 3/ Unilaterally, under a budget reduction law, 4/ the Federal Government decided in 1990 to reduce its contribution towards the costs of social security in certain provinces, making part of it contingent, inter alia, on increases in the GDP of the provinces concerned. The Canadian Supreme Court has upheld this measure. 5/ The Supreme Court also, in a recent split decision, ruled that under the same system the provinces are not obliged to set social security thresholds consistent with recipients' basic needs in order to receive the Federal Government's contribution towards the costs. Although this was a condition for federal financing under the Act, the provinces are required only to attempt to do so. 6/

These decisions are tragic for social security recipients in Canada, whose numbers keep increasing 7/ while benefits keep diminishing. More and more Canadians depend on food banks. In large towns, vagrancy is becoming widespread. Refuges for the homeless can no longer cope. The Canadian poverty rate is now 14.6 per cent, and slightly higher among children at 16.9 per cent. Among the elderly, it is as high as 19.5 per cent. Among new immigrants to Canada, 30 per cent of families and 47 per cent of single individuals are poor. 8/

To this grim picture must be added the consequences of Federal Government financial disengagement from health and post-secondary educational expenditure. 9/

ECONOMIC BACKGROUND

In 1988 Canada signed a Free Trade Agreement (FTA) with the United States. 10/ In 1992 it signed the North American Free Trade Agreement (NAFTA) with the United States and Mexico. 11/ Neither of these agreements contains any social clauses of equivalent effect to the European Community's Social Charter, nor were social partners involved in any way in the negotiations. Recent statistics show convincingly that the Canadian labour market is dividing and that the jobs created are becoming more precarious. 12/ Canada has paid no attention to the collective impoverishment resulting from ratification of the treaties. Industrial jobs have been lost by the thousand in Canada since 1989. Jobs are being created in the service sector where, all too often, working conditions imperil the exercise of economic and social rights, whether or not associated with work.

Yet Canada seems more concerned to consolidate its competitive position on the new markets opened. In order to do so it is self-evidently ready to sacrifice the quality of its social security system. The recent reform of unemployment insurance is a good example.

UNEMPLOYMENT INSURANCE REFORM IN CANADA

In two stages, the Federal Government, which has jurisdiction over unemployment insurance, has severely compromised the right of Canadians to guaranteed maintenance of income if they lose their jobs. Initially, 13/ the Parliament passed an act authorizing the State to withdraw from the Unemployment Insurance scheme, which used to be financed on a tripartite basis. The Federal Government's share of the financing was intended to support the long-term unemployed. At the same time, the Act also had the effect of reducing the maximum period of benefits from 50 to 39 weeks. By combining these major changes with an increase in the waiting period for people who voluntarily quit their jobs, the Government made initial savings of over 1 billion dollars.

The effect of this Act was not only to push through the privatization (employers-workers) of the Unemployment Insurance scheme in Canada but also to make the parties bear a growing share of the costs of job training without guaranteeing income maintenance for the unemployed when they lost their jobs. This is how Canada intends to apply the OECD philosophy for recovery in economies affected by structural changes. 14/ In Canada's view, however, these changes did not suffice to guarantee that the country met new international standards of competition. In a few days, a new Act to amend the Unemployment Insurance Act will take effect in Canada. 15/ This will definitively deny access to the unemployment insurance scheme to anyone who voluntarily quits his job. The burden of proof that termination of employment is not through voluntary departure will, moreover, be upon the jobless individual. Those who are eligible under the scheme will also see their benefits reduced from 60 to 57 per cent of former earnings. In the province of Quebec alone (6 million citizens) this will mean that 3,500 extra households will have to turn to the scheme of last resort, i.e. apply for benefits under the income security scheme. Need one add that women, young people and elderly workers are especially at risk from this reform? Not only does it impair their right to social security and an adequate standard of living, the ban on access to Unemployment Insurance also means that in the great majority of cases these people will not have access to job training. Yet, as the Committee pointed out in its third General Comment, the obligations to monitor the extent of the realization, or more especially of the non-realization, of .... rights, and to devise strategies and programmes for the promotion, are not in any way eliminated as a result of resource constraints. 16/

QUEBEC AND ECONOMIC AND SOCIAL RIGHTS

The second periodic report of Canada devotes roughly 10 pages to the situation in Quebec, one of the country's 10 provinces. 17/ It should be recalled that in 1976, under its jurisdiction, Quebec adopted the Charter of Human Rights and Freedoms, certain articles of which were intended to

guarantee economic and social rights, including the right to financial assistance in order to ensure a decent standard of living. These rights are guaranteed, however, only to the extent provided by law. In essence, a cynic might say, the charter guarantees Quebeckers no economic right other than to be as poor as one another.

Quebec recently passed a law amending the Social Assistance Act: the Income Security Act. 18/ Over 400,000 households in Quebec depend on this last-resort measure for their subsistence. Over 60 per cent of the recipients of Income Security are fit for work. They are the ones most affected by the new Act. They are to be ranked by their fitness for work, then subcategorized by their degree of involvement in employability measures. It goes without saying that the statutes entail differentials in thresholds for assistance, which are already far below acknowledged poverty thresholds.

In passing this Act, Quebec abandoned the commitments it undertook under the Covenants, which it had previously observed. Reality and experience of the Act to date obliges us to say so. Employability measures are inadequate and do not meet the standards of the right to training. At best they lead to precarious and temporary jobs. What is more, the legislature has ordained that anyone enrolled in an employability measure is to be deprived of benefits under the laws governing freedom to join a trade union and minimum working conditions. Very often, however, employability measures are more like disguised and underpaid work than training. Lastly, the entry into force of the Income Security Act has indirectly encouraged a proliferation of State-accredited employment agencies whose aim is to put recipients of income security into jobs subsidized through employability measures. This new labour market for the least well-off impairs the economic rights of the Quebec population. The ILO Committee of Experts on the Application of Conventions and Recommendations has often reminded Governments that training measures should not contain any coercive or disciplinary elements. Quebec has plumped unhesitatingly for the modern logic of the forced labour economy. Beneficiaries of last resort programmes have to play along - it is a question of survival.

The pan-Canadian section of AAJ hopes that these comments will prove useful to the Committee on Economic, Social and Cultural Rights. The Committee has often expressed a wish for reports from States parties which were less descriptive and more critical. This is particularly the case with Canada. 19/ As far as AAJ is concerned, economic and social rights are above all a matter of rights! For this reason it believes that the collective impoverishment of the people of Canada should be drawn to the Committee's attention.

Montreal, 12 April 1993

Notes

1/ E/1990/6/Add.3 (25 January 1992).

2/ See Draft Social Charter by the Coalition of Canadian Community Groups, March 1992.

3/ Canada Public Assistance Act, L.R.C. (1985) c. C-1.

4/ Government Expenditures Restraint Act, L.C. 1991, c. 9.

5/ Renvoi relatif au régime d'assistance publique au Canada, [1991] 2 R.C.S., p. 525.

6/ Canada Ministry of Finance v. R.J. Finlay, file 22162, judgement dated 25 March 1993.

7/ Some 2.3 Canadians are poor and live below the poverty line - 10 per cent of the population, according to the National Council of Welfare: see Revenus de bien-être social, 1991.

8/ National Council of Welfare, Profil de la pauvreté 1980 à 1990, (1992).

9/ See Canadian Health Act, L.C. 1984, c. 6.

10/ (1988) 27 I.L.M. 281.

11/ Ratified by the parties on 17 December 1992 for entry into force on 1 January 1994.

12/ See Simon Langlois, La société québécoise en tendances 1960-1990, I.Q.R.C. 1990.

13/ Act to amend the Unemployment Insurance Act and the Department of Employment and Immigration and Employment and Immigration Commission Act, L.C. 1990, c. 40.

14/ See OECD, Le marché du travail: quelles politiques pour les années '90?, (Paris, 1990).

15/ Bill C-113, Bill to reduce Government expenditures.

16/ See E/1991/23, General Comment No. 3, para. 11, p. 86.

17/ See E/1990/6/Add.3, pp. 66-76.

18/ LRQ c. S-3.1.1, as amended.

19/ See E/1989/L.9, (21 March 1989), p. 31.